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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 JAMES PHILIP DOUGLAS,
9 Petitioner,

10 v.

11 JUDGES BRYAN CHUSCOFF; JUDGE
12 LISA WORSWICK; and PIERCE
13 COUNTY EXECUTIVE PAT
14 McCARTHY,

15 Respondents.

Case No. C09-5490BHS

ORDER OVERRULING
PLAINTIFF'S OBJECTIONS
AND ADOPTING REPORT
AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation of the Honorable J. Richard Creatura, United States Magistrate Judge (Dkt. 11) and Petitioner's objections to the Report and Recommendation (Dkt. 12).

On August 4, 2009, Petitioner filed a motion for leave to proceed in forma pauperis. Dkt. 1. On September 16, 2009, the Magistrate Judge entered an order granting Peitioner's motion to proceed in forma pauperis. Dkt. 9. On the same day, Petitioner filed petition for writ of mandamus (Dkt. 10) upon which the Magistrate Judge entered a report and recommendation (Dkt. 11). On September 24, 2009, Petitioner filed an objection to the Report and Recommendation. Dkt. 12.

Petitioner seeks a writ a of mandamus to request that a neutral arbitrator be appointed in his case and that he be released from incarceration pending appeal. Dkt. 1 at 6 (proposed petition). He also requested that the Court order the expenditure of state funds "so the plaintiff can receive his right to appeal as guaranteed by the Constitution." *Id.*

ORDER – 1

In responding to this petition, the Magistrate Judge notes that “a District Court has no jurisdiction to issue a mandamus to compel action by a state official.” Dkt. 11 (citing 28 U.S.C. § 1361 (district court has jurisdiction over mandamus action only to compel officers of the Untied States to perform their duties)). Based on this provision and case law interpreting the provision, the Magistrate Judge concluded that the “court lacks jurisdiction to entertain this petition.” Dkt. 11 at 3.

On September 24, 2009, Petitioner filed a letter with the court regarding the Magistrate Judge's report and recommendation in this matter. Dkt. 12. In his letter Petitioner asks the Court to either (1) obtain a copy of Petitioner's habeas corpus petition, which is currently before the Honorable Karen L. Strombom, United States Magistrate Judge, in a separate cause of action, C09-5439RJB/KLS; or (2) reconsider Magistrate Judge Creatura's Report and Recommendation in the instant matter. *Id.* The Court treats Petitioner's letter as an objection to the Report and Recommendation. In doing so, the Court will not consider Petitioner's habeas corpus petition, as it involves a separate matter. Further, the Court declines Petitioner's request to reconsider the Report and Recommendation because it agrees with the Magistrate Judge's conclusion that the Court lacks jurisdiction in this matter pursuant to 28 U.S.C. § 1361.

Therefore, the Court having considered the Report and Recommendation, Plaintiff's objections, and the remaining record, does hereby find and order:

- (1) The Court **OVERRULES** Plaintiff's objections;
 - (2) The Court **ADOPTS** the Report and Recommendation; and
 - (3) This action is **DISMISSED** because the court lacks jurisdiction to decide the matter.

DATED this 5th day of November, 2009.



BENJAMIN H. SETTLE
United States District Judge